IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 25TH SEPTEMBER 2007 / 3RD ASWINA 1929

Bail Appl..No. 5627 of 2007()

CRIME NO. 780/07 OF TIRUR POLICE STATION

PETITIONERS

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1. JAYAN @ VIJAYAN, S/O RAGHAVAN,
CHANAYIL HOUSE, PURATHUR P.O.,
KAVILANGAD.

2. PRAJEESH, S/O BHASKARAN,
THITTALLUR, PUTHUPALLY P.O.,
TIRUR, MALAPPURAM.

BY ADV. SRI.C.V.MANUVILSAN
SRI.G.SUDHEER (THURAVOOR)
SRI.P.C.ANIL KUMAR

RESPONDENTS:

STATE OF KERALA, REPRESENTED BY
S.I. OF POLICE, THROUGH THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 25/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 5627 of 2007

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Dated this the 25th day of September, 2007

O R D E R

Application for anticipatory bail. The petitioners are accused 1 and 2. They face allegations for offences punishable, inter alia, under Sections 308 and 326 I.P.C. The alleged incident took place at 7 p.m. on 23.7.2007. Personal animosity is the alleged motive. Iron rod was allegedly used for the commission of the offence. Fracture of left forearm is the injury sustained. Investigation is in progress. The petitioners apprehend imminent arrest.

2. The learned counsel for the petitioners submits that the petitioners are absolutely innocent. That an incident had taken place is not disputed. But the petitioners submit that the boot is on the other leg. They are not the aggressors, but are victims of the aggression. The learned counsel in these circumstances prays that the discretion under Section 438 Cr.P.C. may be invoked in favour of the petitioners to save them of the undeserved trauma of arrest and detention.

3. The learned Prosecutor opposes the application. He submits that a counter allegation is raised belatedly. It is submitted that

the counter allegation is only an attempt to exculpate the petitioners. In these circumstances the petitioners may be directed to resort to the ordinary course of appearing before the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

4. I have considered all the relevant inputs. I find merit in the opposition raised by the learned Prosecutor. I do not find any features in this case, which would justify the invocation of the extra ordinary equitable discretion under Section 438 Cr.P.C. This I am satisfied is a fit case where the petitioners must resort to the ordinary and normal procedure of appearing before the Investigator or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

5. This application is accordingly dismissed. Needless to say, if the petitioners appear before the Investigating Officer or the learned Magistrate having jurisdiction and apply for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously.

(R. BASANT)
Judge

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